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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd November 2006

No. 9557—li/1(S)-79/1998(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th August 2006 in I. D. Case No. 2/2005 of the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial disputes between the management of the Executive Engineer, GRIDCO Limited, Bargarh, Dist. Bargarh and its workmen Shri Pankaj Pradhan and 7 others at Pada, Bijepur, Dist. Bargarh was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER

INDUSTRIAL TRIBUNAL, ROURKELA

INDUSTRIAL DISPUTE CASE NO. 2 OF 2005

Dated the 11th August 2006

Present :

Shri S. K. Behera
Presiding Officer, Industrial Tribunal
Rourkela.

Between :

Executive Engineer	.. First Party—Management
GRIDCO Limited, Bargarh	
Dist. Bargarh.	

And

Shri Pankaj Pradhan and 7 others	.. Second Party—Workmen
At Pada, Bijepur, Dist. Bargarh.	

Appearances :

For the First Party—Management	..	None
For the Second Party—Workmen	..	In person

AWARD

This matter arises out of a reference made by the Government of Orissa, Labour & Employment Department under Sections 10 and 12 of Industrial Disputes Act vide their memo No. 5101(6), dated the 16th April 1999 for adjudication on the following question :—

“ Whether the termination of the services of Shri Pankaj Pradhan, N.M.R. and 7 others by the management of M/s GRID Corporation of Orissa, Bargarh with effect from the 1st April 1994 is legal and/or justified ? If not, to what relief those workmen are entitled ?

2. The second party workmen have filed claim statement wherein it has been stated that the second parties Shri Pankaj and Shri Dinabandhu were appointed as N.M.Rs. with effect from the 1984, second party Shri Bhibisen was appointed with effect from the 1985, second parties Shri Baladev, Radhashyam, Chaturbhuja, Bijay and Narayan were appointed with effect from the 1988. They were all appointed as N.M.Rs. and were working under Sectional Officer, Bijepur. After appointment, they were being engaged in field work along with permanent helpers of the department and performing the maintenance and repair work of the electrical supply lines and also in drawing electrical lines. Each of them were getting monthly salary of Rs. 750. They were working regularly, continuously and have completed more than 240 days of work each year of their employment. While so working Sectional Officer, Bijepur and S.D.O., Barpali did not pay the salary of workmen from December 1993 to March 1994 with ulterior motive and when they demanded payment, they were refused employment with effect from the 1st April 1994. They have been illegally terminated from service without complying with provisions of Sections 25-F, 25-N and 25-G of the Industrial Disputes Act. After termination of their service, the management have appointed new persons in their place like Shri Murali Patel, Shri Udhaba Bag, Shri Ramesh Bag, Shri Bhojraj Pradhan, Shri Gobind Sahu, etc. They made representation to the management for reinstatement with regularisation of service to which the management did not pay any heed. They have completed 10 years of continuous service. Hence prays for reinstatement with full back wages.

3. In reply, the management have denied all the allegations made in the claim statement. They contended that the second party filed a W. C. case before D.L.C. for realisation of their wages which the first party agreed to pay. But the said wages are for casual works of the second party for hire labour works on casual basis. The management claims that the second party's were never full time workers and never worked for 240 days continuously at any point of time. Since they were not given employment, question of violation of provisions of Industrial Disputes Act does not arise. They claim that management has right to give work to anybody which is temporary and casual in nature. They deny that the second parties were continuously worked for 10 years with clean service records.

4. On the aforesaid analysis following issues have been framed :—

- (I) Whether the reference is maintainable ?
- (II) Whether the termination of the services of Shri Pankaj Pradhan and 7 others by the management with effect from the 1st April 1994 is legal and/or justified ?
- (III) If not, to what relief those workmen are entitled ?

5. On the date of hearing, the management remained absent consecutively for three dates, so the management was set *ex parte*.

6. All the issues are taken up together for the sake of convenience. The second party workmen claims that they were appointed as N.M.Rs. by the first party management. But it appears from Ext. A which is a xerox copy of pay details of the workmen excluding Shri Radhashyam Patel who is not contesting the case. From this documents, it appears to me that they were mazdoors which means that they were only labourers and not N.M.Rs. No appointment order of any second party workmen appointing him as N.M.R. has been proved. So the second party workmen to prove that they were working as N.M.Rs. has submitted some experience certificate. But the man who issued the experience certificate has not been examined nor from the experience certificate in absence of the appointment order, it can not be held that they were working as N.M.Rs. In absence of any documentary evidence in this regard only basing upon the affidavit I do not think it proper to declare them as N.M.Rs. appointed by the first party management. Accordingly I hold that the workmen were working as mazdoor under the first party management. As indicated above, there is no cogent evidence that actually they worked for 240 days. Accordingly I hold that there is no need of compliance of Sections 25-F, 25-N and 25-G of the Industrial Disputes Act.

7. It was the boundant duty on the part of the second party workmen to prove that actually they were appointed as N.M.Rs. and they received their salary of Rs. 750 per month. But that has not been proved for the reasons best known to the second party workmen. They could have take the shelter of the tribunal to obtain the relevant documents in support of their case. But that has also not been done by the second party workmen. Despite opportunity given by the Hon'ble High Court of Orissa in W. P. (C) No. 5416 of 2002 and except filing affidavit no other evidence was adduced by the second party workmen.

8. In such peculiar circumstances I can not accept the action of the management is illegal. I may mentioned here that even an *ad hoc* appointment is purely temporary and a person getting *ad hoc* appointment can be terminated as and when necessary.

9. Had the second party workmen proved that they were actually working as N.M.Rs. I would have taken a different view. Since that has not been done I am bound to say that they worked as labourers under GRIDCO for a certain period. I may further make it clear that they should have establish that continuously for 5 years they were appointed as N.M.Rs. which is lacking in the instant case and on the other hand as indicated above I find that they are only mazdoors.

10. In the premises, I hold that such mazdoors can be terminated at any time without compliance of any provisions of law. Accordingly I hold the termination of the second party workmen are legal and justified.

11. As indicated above from the attendance register-*cum*-payment slip, Ext. A I find the second party workmen have not received their salary, though they remained present in the field of work beginning from the 1st February 1994 to the 10th February 1994. This the first party management is liable to pay all the outstanding balance amount including the aforesaid amount only as they worked under the first party management as labourers.

12. The second claim is that they have not received the salary from the December 1993 to March 1994. In their affidavit they have mentioned that the second party workmen have worked under the management. But the first party has not paid their wages from December 1993 to March 1994. So the second party workmen are entitled to get this amount and other pending wages from the first party management. Accordingly the first party is directed to clear all their arrear dues of the second party workmen as quickly as possible.

13. The reference is answered accordingly.

Dictated and corrected by me.

S. K. BEHERA
11-8-2006
Presiding Officer
Industrial Tribunal
Rourkela

S. K. BEHERA
11-8-2006
Presiding Officer
Industrial Tribunal
Rourkela

By order of the Governor
N. C. RAY
Under-Secretary to Government